IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA	*	**CRIMINAL NO. 13-731 (DRD)**
	*	
Plaintiff	*	
	*	
v.	*	
	*	
WILLIAM ROSADO-CANCEL	*	
	*	
Defendant	*	
	*	
* *	*	

CO-DEFENDANT WILLIAM ROSADO-CANCEL'S OBJECTIONS TO THE PRESENTENCE REPORT

TO THE HONORABLE COURT:

COMES NOW, defendant **WILLIAM ROSADO-CANCEL**, by and through the undersigned attorney, and very respectfully **ALLEGES** and **PRAYS** as follows:

The defendant has received copy of the Presentence Report and hereby presents her Objections to the Presentence Report.

INTRODUCTION

The defendant, William Rosado-Cancel, was the subject of a Two-Count Indictment and Forfeiture allegation rendered by a District of Puerto Rico Grand Jury on October 9, 2013.

Count One of conviction charges that on or about September 28, 2013, the defendant along with Juan Antonio Rosario-Cintrón, aiding and abetting each other, did knowingly possessed a machinegun, that is, a Glock model 31, .357 caliber, serial number SEH847, that shoots, and can be readily restored and converted to shoot, automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

Count Two of conviction charges that on or about September 28, 2013, the defendant along with Juan Antonio Rosario-Cintrón, aiding and abetting each other, knowingly possessed a firearm, that is a Smith & Wesson model 4516-1, .45 caliber, that had been shipped an transported in interstate of foreign commerce, for which the manufacturer's serial number had been removed, altered and obliterated.

Pursuant to Title 18 U.S.C. §924(d)(1) and Title 28, 2461(c), the defendant shall forfeit to the Unites States the firearms and ammunition involved in the commission of the offense; that is: one (1) Smith & Wesson, model 4516-1, .45 caliber, with obliterated serial number; and one (1) Glock, model 31, .357 caliber, with serial number SEH847.

On June 17, 2016, the defendant pled guilty to a two-count Indictment pursuant to a **straight plea.**

Defendant Rosado-Cancel hereby presents his objections to the Presentence Report:

In the Offense Level Computations, the Presentence Investigation Report states that "the guideline for Title 18, U.S.C. § 922(o) offenses is found in USSG §2K2.1 of the guidelines. However, since the defendant used the firearms to commit a first degree murder a cross reference to USSG §2A1.1 is applicable pursuant to USSG

§2K2.1(c)(1)(B). That section provides that an offense involving first degree murder has a base offense level of 43. USSG §2A1.1(a)."

In the Puerto Rico State Court, Carolina Part, the defendant was charged for the mentioned murder, and two (2) different judicial officers determined no probable cause at their respective preliminary hearings.

FACTS

According to the report of investigation, on September 28, 2013 at approximately 1:00 p.m., officers from the Police Department of Puerto Rico (PDPR) Traffic Division were performing a routine vehicle stop on road 187 in Loíza, Puerto Rico. While on road 187, the officers observed a green Toyota Yaris traveling towards them at approximately 60 miles per hour (MPH) in a 35 MPH zone. Officer AR, ordered the driver of the vehicle to stop, which the driver initially did. As Officer AR walked was walking towards the vehicle, the driver, an unidentified female, along with two (2) other males fled the scene. Subsequently, Officer AR got into his patrol car and a pursuit entailed.

During the pursuit on road 187, the Officer AR observed when a male occupant, who was in the rear passenger seat, threw two (2) pistols out of the rear passenger's side window. The pursuit ensued until the driver of the green Toyota Yaris was forced to stop due to a traffic jam on road 187. Officer AR dismounted his vehicle and approached the Toyota Yaris. When Officer AR got close to the vehicle, he was able to identify a female driver, [2] Juan Antonio Rosario-Cintrón, in the passenger's front seat and [1] William Rosado-Cancel in the passenger's rear seat of the vehicle. The officer and other backup officers, placed all individuals under arrest.

The following firearms were recovered from the scene3: a Smith and Wesson, model 4516-1, .45 caliber with an obliterated serial number; and a Glock, model 31, .357 caliber, serial number SEH847. The aforementioned Glock pistol has a silver colored modification to convert it into a machinegun, while the pistol itself is black, making the modification clearly visible.

According to information provided by the government, on September 29, 2013, Alexandra Gómez-Ayala completed a written affidavit regarding what happened the day her uncle Aníbal Gómez-Vélez4 was murdered. She related that on September 28, 2013, at approximately 10:00 am, she arrived to her house. Approximately 10 minutes later, Aníbal Gómez-Vélez arrived to Mrs. Gómez's house since he was going to help her with a landscaping job. After having breakfast together, they proceeded to the patio area and started working. At approximately 12:40 p.m., Mrs. Gómez went inside the house to take a break. Subsequently, she heard a loud and continuous noise, which she identified as gunfire. Thereupon, she walked towards a window and saw her uncle standing as he was receiving multiple gunshots until he fell -face up- to the ground. Mrs. Gómez related that the gunshots were uninterrupted even though she was able to identified different sounds, as if they were coming from two (2) different weapons. After this, she conveyed that she ran towards the balcony, where she was able to identify a white, thin young man, with a cloth mask around his face.[1] The "thin" man was wearing a black shirt, long pants that looked like jeans, and had a firearm in his hand. He got in the passenger's seat of a car that looked like a Suzuki (dark color), which was parked in front of Mrs. Gómez's house. Subsequently, she reported seeing another young male that ran from the balcony column towards the car, carrying a small/black firearm in his right hand. The second young man was depicted by Mrs. Gómez as short, thin, dressed with a black shirt, and with a cloth mask around his face. As the second man got in the car, in the rear seat (driver's side), the vehicle left towards Avenue 188.

On October 1, 2013, the above-mentioned firearms, along with one (1) .357 SIG bullet; twelve (12) .40 casings; five (5) .45 casings; sixteen (16) .357 SIG casings; and four (4) fired projectiles retrieved from the murder scene were received by the Institute of Forensic Science of Puerto Rico. On June 3, 2014, the forensic investigator in charge of the report concluded that the casings and ammunition recollected from Aníbal Gómez-Vélez's murder scene were shoot by the aforesaid firearms.

ARGUMENT

In this case the evidence should reflect that the firearms allegedly used in the murder of the victim were seized by the forensic agents at the murder scene (5-7 miles from the arresting site).

[1] Only one mask was found by the arresting agents.

However, some agents also stated that same firearm was seized in the ground after been tossed out from a vehicle. The fact that the defendant admitted possession of the firearm at the vehicle, (from where the firearm were tossed-out) does not equal to having participated in the murder of the victim.

The facts clearly indicated that three (3) individuals were present during the murder of the victim, but the defendant was not identified as one of the participants, there is merely no evidence he actively participated in the murder of the victim.

Hence, the Presentence Investigation Report is erred in determining that "the defendant used the firearm to commit a first degree murder. Therefore, any reference to USSG § 2A1.1 is misguided.

WHEREFORE, in view of the arguments presented herein it is respectfully requested from this Honorable Court to take into consideration the objections presented hereby, and the Presentence Investigation Report be amended to reflect the applicable calculation pursuant to USSG § 2K2.1.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of October, 2016.

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I HEREBY CERTIFY: That I on this same date electronically filed the foregoing document with the Clerk of Court for the District of Puerto Rico, through the CM/ECF electronic filing system, which will provide notification of this filing to the United States Attorney's Office for the District of Puerto Rico.

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